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Jaron Ming
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Camarillo, CA 93010-6064

Ellen Aronson, Regional Director
Bureau of Ocean Energy Management
Pacific OCS Region
770 Paseo Camarillo, 2nd Floor
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Re: Bureau of Safety and Environmental Enforcement (BSEE) and Bureau of Ocean Energy Management (BOEM) Coordination with the Coastal Commission Under the Coastal Zone Management Act (CZMA) for Activities Involving Hydraulic Fracturing and Other Well Stimulation Techniques on the Outer Continental Shelf (OCS)

Dear Mr. Ming and Ms. Aronson:

On September 20, 2013, the Governor of California signed legislation (Senate Bill (SB) 4) that expressed "paramount" concerns over the adverse environmental and social effects from hydraulic fracturing and other well stimulation activities¹, and called for updates to existing regulations, standards and practices, conducting additional studies and monitoring of impacts, and providing for increased public disclosure and transparency of information collected by the regulatory agencies reviewing these activities.

In light of these concerns, we have begun discussions with several federal and state agencies to examine our mutual practices and improve coordination. For activities on the Outer Continental Shelf (OCS), we began this discussion by requesting from BSEE instances where BSEE/BOEM have authorized hydraulic fracturing and other well stimulation techniques in recent years, including the review mechanism used to authorize such activities. You responded by informing us that four such authorizations have occurred over the past two years, and that these

¹ SB 4 defines well stimulation as the "Treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of a formation." This definition includes: (1) Hydraulic fracturing, (2) Acid matrix stimulation, and (3) Acid fracturing.

authorizations were granted as BSEE administrative approvals of Applications for Permits to Drill, or APDs. In these instances, Coastal Commission staff was not informed of the applications received or the final action taken by BSEE.

In the spirit of our mutual coordination responsibilities, which reflect the fundamental framework of the Coastal Zone Management Act, we wish to make several recommendations related to the process by which these activities are reviewed by your agencies, as well as potential additional federal consistency review for these activities.

Under the OCS Regulations, it appears your initial procedural determinations concerning recent hydraulic fracturing and other well stimulation activities have been limited to the question of whether the activities are considered covered by an existing OCS Plan, and either authorizable through an APD or an Application for Permit to Modify (APM). Activities involving more extensive BSEE/BOEM environmental review procedures (such as those described below) would automatically trigger potential federal consistency review under the CZMA (for the reasons we will explain further below).

The review of these applications has not, to date, included coordination with the Commission staff. Without specific knowledge of the proposed activities, we have no way of determining, or commenting to you, as to whether we agree that the existing OCS Plans do, in fact, cover these authorizations, or whether the activities should be considered modifications to existing OCS Plans. It appears to us that the OCS Regulations (30 CFR, Chapters II and V)) provide a fairly low bar for activities triggering the need for more extensive review and coordination than that performed in APD/APM reviews. For example, we note that 30 CFR § 550.283 lists at least eight situations where an OCS Plan revision would be required:

§ 550.283 When must I revise or supplement the approved EP, DPP, or DOCD²?

(a) *Revised OCS plans.* You must revise your approved EP, DPP, or DOCD when you propose to:

- (1) Change the type of drilling rig (*e.g.*, jack-up, platform rig, barge, submersible, semisubmersible, or drillship), production facility (*e.g.*, caisson, fixed platform with piles, tension leg platform), or transportation mode (*e.g.*, pipeline, barge);
- (2) Change the surface location of a well or production platform by a distance more than that specified by the Regional Supervisor;
- (3) Change the type of production or significantly increase the volume of production or storage capacity;
- (4) Increase the emissions of an air pollutant to an amount that exceeds the amount specified in your approved EP, DPP, or DOCD;

² Exploration Plan (EP), Development and Production Plan (DPP), or Development Operations Coordination Document (DOCD)

- (5) Significantly increase the amount of solid or liquid wastes to be handled or discharged;
- (6) Request a new H₂S area classification, or increase the concentration of H₂S to a concentration greater than that specified by the Regional Supervisor;
- (7) Change the location of your onshore support base either from one State to another or to a new base or a base requiring expansion; or
- (8) Change any other activity specified by the Regional Supervisor.

Fracking and well stimulation activities would appear to have the potential to trigger the need for OCS plan revisions under situations (3) and (5), above.

Furthermore, the same regulation requires "supplemental" OCS plans for any situation where you determine that any activities have not been authorized under an existing OCS Plan; 30 CFR § 550.283(b) provides:

(b) *Supplemental OCS plans.* You must supplement your approved EP, DPP, or DOCD when you propose to conduct activities on your lease(s) or unit that require approval of a license or permit which is not described in your approved EP, DPP, or DOCD. These types of changes are called supplemental OCS plans.

Both revised and supplemental OCS Plans trigger formal Coastal Commission CZMA federal consistency review, as proscribed in 30 CFR § 550.285(c), which states:

(c) *Procedures.* All supplemental EPs, DPPs, and DOCDs, and those revised EPs, DPPs, and DOCDs that the Regional Supervisor determines are likely to result in a significant change in the impacts previously identified and evaluated, are subject to all of the procedures under §§ 550.231 through 550.235 for EPs and §§ 550.266 through 550.273 for DPPs and DOCDs.

The procedures identified in the above subsection specifically include CZMA review, as follows:

§ 550.232 What actions will BOEM take after the EP is deemed submitted?

(a) *State and CZMA consistency reviews.* Within 2 working days after deeming your EP submitted under § 550.231, the Regional Supervisor will use receipted mail or alternative method to send a public information copy of the EP and its accompanying information to the following:

(2) *The CZMA agency of each affected State.* The CZMA consistency review period under section 307(c)(3)(B)(ii) of the CZMA (16 U.S.C. 1456(c)(3)(B)(ii)) and 15 CFR 930.78 begins when the State's CZMA agency receives a copy of your deemed-submitted EP, consistency certification, and required necessary data and information (see 15 CFR 930.77(a)(1)).

§ 550.267 What actions will BOEM take after the DPP or DOCD is deemed submitted?

(a) *State, local government, CZMA consistency, and other reviews.* Within 2 working days after the Regional Supervisor deems your DPP or DOCD submitted under § 550.266, the Regional Supervisor will use receipted mail or alternative method to send a public information copy of the DPP or DOCD and its accompanying information to the following:

(3) *The CZMA agency of each affected State.* The CZMA consistency review period under section 307(c)(3)(B)(ii) of the CZMA (16 U.S.C. 1456(c)(3)(B)(ii)) and 15 CFR 930.78 begins when the States CZMA agency receives a copy of your deemed-submitted DPP or DOCD, consistency certification, and required necessary data/information (see 15 CFR 930.77(a)(1)).

The above-discussed procedures apply to all of California's OCS Plans, regardless of their authorization date. For OCS Plans the Commission has previously reviewed (i.e., plans authorized after 1977, when the federal government (NOAA) certified the California Coastal Management Program (CCMP)), the CZMA regulations (15 CFR Part 930) provide *additional* coordination requirements. Department of Interior (DOI) approval of roughly half (11) of the 23 Platforms in California OCS waters predated the Commission's federal consistency authority. OCS Plans for the remaining 12 Platforms were subject to Commission consistency review³, which also renders them subject to the CZMA's ongoing review and monitoring provisions.

For these 12 Platforms, the CZMA regulations contain both parallel and additional requirements to those described above in the OCS Regulations. Subpart E (the OCS Subpart) of the CZMA regulations (15 CFR § 930.82) provides for supplemental consistency review of Amended OCS Plans. In parallel fashion, Subpart D (15 CFR § 930.51) provides for supplemental consistency review for "major amendments" to federal license or permit activities not previously reviewed by the State. Beyond these requirements for amended and supplemental plans, the CZMA regulations also impose ongoing review, and additional coordination and monitoring obligations, as follows:

³ Platforms Irene, Hidalgo, Harvest, Hermosa, Heritage, Harmony, Habitat, Gail, Gina, Gilda, Edith, and Eureka.

1. Reporting. Under 15 CFR § 930.79(b), even where BSEE/BOEM determine that an activity is considered covered under a previously-approved OCS Plan, for those 12 OCS Platforms the Commission has reviewed, applicants must notify the Commission of any subsequent application received, to assist the Commission in its efforts to monitor activities associated with previously-approved OCS plans. CFR § 930.79(b) states:

Unless the State agency indicates otherwise, copies of federal license or permit applications for activities described in detail in an OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

We request, for the sake of efficiency, that BSEE/BOEM inform us when these applications are received, and either provide us copies, or once notified, we will contact the applicants to request copies. We also intend to work with BSEE/BOEM to identify which types of applications we wish to be notified about.

2. Changed Circumstances. Under 15 CFR § 930.85, BSEE/BOEM must cooperate and coordinate with the Commission to monitor authorized activities to assure that they “continue to conform to both federal and state requirements” § 930.85(a). This regulation also contains a “reopener clause” providing for further Commission review for activities that have been modified or if an applicant is failing to substantially comply with an approved OCS Plan. Sections 930.85(b) and (c) provide:

(b) If a State agency claims that a person is failing to substantially comply with an approved OCS plan subject to the requirements of this subpart, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the Minerals Management Service⁴ region involved. Such claim shall include a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a request for appropriate remedial action. A copy of the claim shall be sent to the person.

(c) If a person fails to substantially comply with an approved OCS plan, as determined by Minerals Management Service, pursuant to the Outer Continental Shelf Lands Act and applicable regulations, the person shall come into compliance with the approved plan or shall submit an amendment to such plan or a new plan to Minerals Management Service. When satisfied that the person has met the requirements of the OCSLA and this subpart, and the Secretary of the Interior or designee has made the determination required under 30 CFR §250.203(n)(2) or § 250.204(q)(2), as applicable, the Secretary of the Interior or designee shall furnish the State agency with a copy of the amended OCS plan (excluding proprietary information), necessary data and information and consistency certification. Sections 930.82 through 930.84 shall apply to further State agency review of the consistency certification for the amended or new plan.

⁴ BSEE/BOEM's predecessor DOI permitting agency.

We question whether activities associated with hydraulic fracturing and other well stimulation practices were described in previously authorized OCS Plans, and if they were, we would appreciate it if BSEE/BOEM could provide the information that would allow us to independently review such a conclusion. We also believe that activities are likely being conducted in a manner that is not consistent with California's approved management program, as they raise a host of not-previously-considered significant coastal marine resource protection concerns, including:

1. Potential adverse impacts to aquatic organisms associated with exposure to toxic chemicals commonly found in hydraulic fracturing fluids.
2. Geologic hazards associated with increasing subsurface pressures and additional fluid injection in seismically active areas (hazards that could involve release of hydrocarbons or chemicals to the marine environment).
3. Potential for spills (and related marine resource effects) related to accidental release of chemicals temporarily stored on oil and gas platforms, during transport to and from a platform, or from improperly abandoned wells.
4. Whether well casings and other well components have been designed to safely accommodate the increased pressures associated with the stimulation activities.
5. Whether platforms and wells have been designed for the extended life associated with continuing oil and gas production for the period the stimulation activities are intended, and/or whether impact/mitigation analyses needs to be revised to reflect longer platform life.

Consequently, we believe it is incumbent on BOEM and BSEE to conduct more detailed scrutiny of the available procedural review mechanisms, and to do so in a manner that will provide greater transparency of decision-making and information-sharing. We urge you to seriously consider whether applications to perform hydraulic stimulation should be considered revisions or supplements to the approved plan under BOEM/BSEE regulations, at least until such time as additional environmental analysis of these activities can be conducted. The latter determination would trigger the Commission's federal consistency review procedures.

Moreover, even if you do believe the applications qualify for administrative review, we wish to be informed and provided copies of all applications (and accompanying information) received, in accordance with 15 CFR § 930.79(b). In the spirit of cooperation envisioned by the CZMA, we are requesting all such information, not only for those activities associated with Platforms the Commission has reviewed, but also those whose approval predated the certification of the CCMP (i.e., for all 23 Platforms). As you are aware, we are also working with the Environmental Protection Agency (EPA) in the context of increasing coordination and information-sharing for discharges associated with all 23 OCS Platforms, since EPA NPDES permits are regularly re-issued (every 5 years) and cover all Platforms that discharge into the California OCS.

We appreciate the open dialogue and communication we have had with your staff and urge you to continue to work with us to improve transparency and scrutiny of these matters which are of significant statewide, and indeed national, public concern. If you have any questions, please call me at (415) 904-5205.

Sincerely,

A handwritten signature in black ink, appearing to read "Alison Dettmer". The signature is fluid and cursive, with the first name "Alison" written in a larger, more prominent script than the last name "Dettmer".

ALISON DETTMER
Deputy Director

EPA Region IX
Department of Conservation